

**Shelby Tissue, Inc. and United Paperworkers International Union, AFL-CIO-CLC, Petitioner.**  
Case 26-RC-7638

March 8, 1995

**DECISION AND DIRECTION OF SECOND  
ELECTION**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections and determinative challenges to an election held on June 9, 1994, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 33 for and 40 against the Petitioner with 8 challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations,<sup>1</sup> and finds that the election must be set aside and a new election held. In particular, we adopt the hearing officer's finding that the Employer's general manager, Ray Guenin, engaged

<sup>1</sup> In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendation to overrule the Petitioner's Objections 1, 4, 5, 9, 12, and 14, and to approve the withdrawal of the Petitioner's Objections 3, 6, 7, 8, 10, 13, 15, and 16.

in objectionable conduct during his election eve speech to employees. Guenin repeatedly implied, without objective foundation, that a vote for union representation would inevitably lead to plant closure. In addition to those statements by Guenin which the hearing officer specifically underscored in his opinion, we note the same coercive implication in Guenin's reference to the fate of another company's mill. He stated, "The Paperworkers represented 1,200 people at KC's (Kimberly-Clark) Memphis mill. Now there's only 650 left and they are going to be out of a job." Guenin offered no objective evidence that the Paperworkers had done anything to cause or to exacerbate problems at the Kimberly-Clark mill. Accordingly, we adopt the hearing officer's recommendation to sustain the Petitioner's Objections 2 and 11. *Dominion Engineered Textiles*, 314 NLRB 571 (1994).<sup>2</sup>

[Direction of Second Election omitted from publication.]

<sup>2</sup> Member Cohen agrees with his colleagues that the Employer created the impression that Kimberly-Clark laid off employees because of the presence of the Petitioner there, and implied that the Employer would do the same thing if the Union were selected at the Employer's facility. The Employer did not seek to explain these matters in terms of an economic prediction based on objective facts. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). Accordingly, Member Cohen would distinguish this case from *Dominion Engineered Textiles*, supra, a case in which he dissented. Further, in overturning the election, Member Cohen relies solely on the conduct set forth above.